

1 how she kept her eye on the program to ensure that it was
2 responsible, etc. If you didn't do it, it stands unattacked.
3 Any other objections?

4 MR. SCHAUBLE: Next, Your Honor, page 7, paragraph
5 12, concerning "Date with Dale." I think -- I object to this
6 on the basis of relevance, and there's no real specific -- I
7 think this is too general and vague to make a finding
8 concerning Trinity's ascertainment or programming efforts.
9 She states little more than a, than a preference which I, I
10 don't -- you know, I don't think that's enough for Your Honor
11 to make a finding based upon.

12 JUDGE CHACHKIN: Well, that's the facts, that's the
13 facts. I overrule your objection.

14 MR. SCHAUBLE: Next, Your Honor, paragraph 15,
15 page 8 going on to page 9. I object on the basis of relevance
16 where the witness admits she did not book the guests for this
17 show and all, all that's stated here is that she reviewed
18 guests' topics. That standing by itself has -- I would submit
19 has no relevance.

20 JUDGE CHACHKIN: You can argue that in your
21 findings. Overruled.

22 MR. SCHAUBLE: Next, Your Honor, paragraph 17,
23 page 9. Here we're dealing with a program that was produced
24 by TBN and I object to this information considering the
25 non-TBN -- some phone conversations, I object to this on the

1 basis of relevance.

2 MR. EMMONS: Your Honor, this reflects that the
3 licensee had input into the programming or at least attempted
4 to have input into the programming of a program that was
5 produced by someone else by aired by TBN and I think that's
6 relevant to the ascertainment process because she testifies
7 that the input she had was to be sure that the program was
8 responsive to the problems that Trinity had ascertained.

9 JUDGE CHACHKIN: Well, I agree with you that all we
10 have is general statements here. There's no backup data
11 supporting the contention that "Christian Lifestyle" magazine
12 considered the, the needs and interests of the licensee's
13 service area. Then do we have -- all -- the, then I -- it
14 hasn't been established. Simply in a mere statement that
15 these suggestions were variably followed and program
16 production, the programs broadcast, that doesn't provide any
17 facts in support of that contention. These are conclusions
18 and they will be treated as such. Obviously, if the station
19 wanted to -- if the licensee wanted to demonstrate that in
20 fact "Christian Lifestyle" magazine met the needs and
21 interests of the community in the service area it would have
22 put in evidence to establish that fact. A general statement
23 -- a conclusory statement is not sufficient to establish that
24 fact. Any other objections?

25 MR. SCHAUBLE: Yes, Your Honor. On page -- on the

1 bottom of page 10 going on to page 11, I object to this which
2 -- to this on the basis of relevance. This is apparently,
3 apparently the witness had some telephone calls concerning
4 programming, specifically, children's programming. There's no
5 showing here that any of these telephone calls were from
6 people within the service area of the proposed -- of, of the
7 Miami station and absent any connection to the service area
8 here I don't think there's any relevant. And also, I -- I'm
9 not aware of any authority where the Commission would take,
10 take into account this sort of matters either under
11 ascertainment or under programming.

12 MR. EMMONS: Well, Your Honor, children's
13 programming is, is certainly cognizable under the public
14 interest standard of the Communications Act and therefore I
15 think relevant to renewal expectancy and I this paragraph in
16 question simply describes a process by which the licensee --
17 at least a part of the process by which the licensee
18 determined its, its children's programming.

19 MR. SCHAUBLE: Your Honor, there are no, no specific
20 programs listed here, there's very general mention of revision
21 of the program -- it doesn't describe what the revision was.

22 JUDGE CHACHKIN: Well, all I could say is I will
23 determine what PSA's were carried on the basis of the showing
24 as to PSA and if the PSA's don't reflect what's contained here
25 then it'll be disregarded.

1 MR. SCHAUBLE: Excuse me, excuse me, Your Honor, I'm
2 sorry --

3 JUDGE CHACHKIN: What are we talking about? We
4 talking about the --

5 MR. SCHAUBLE: I'm talking about paragraph 20.

6 JUDGE CHACHKIN: Oh, I'm sorry. I thought you were
7 talking -- missed that. Well, my difficulty with this,
8 there's no statement here as to which particular children's
9 programs were revised. It just says, "It resulted in the
10 revision of the programming in our block of children's
11 programming at least once," but there's nothing here
12 indicating what, what children's program existed prior to the
13 revision, and what was the nature of the revision? All we
14 have is a general statement about children's programming.
15 Now, in the absence of facts, I don't know what she's talking
16 about, and I don't know how you could write a finding on that
17 that programming was revised when we don't know what the
18 nature of the revision was.

19 MR. SHOOK: Another problem here, Your Honor, is
20 that this doesn't appear to have any connection with Miami.
21 This woman is located out in California and it's taking
22 telephone calls relative to, you know, what conceivably is
23 happening primarily in the California area and there's
24 absolutely no connection between the telephone calls and the
25 Miami issues.

1 MR. EMMONS: Well, children's programming is --
2 tends to be generic, Your Honor, for, for children and not to
3 be specifically targeted to a particular community because
4 children don't define their worlds in terms of, of community
5 as much as adults do. So --

6 JUDGE CHACHKIN: You could argue that. But the fact
7 of the matter is as pointed out by the Bureau, the woman is
8 located in California and there may be specific children's
9 needs in Florida that may not be the same as the ones in
10 California. I don't know what the situation there about
11 wearing seat belts is and what-have-you. And also as I
12 pointed out, there's no, there's no statement in here as to
13 what revisions were made. Says, "Revisions were made." What
14 were the nature of the revisions? When were they made? How
15 did they change the programming? What was the children's
16 programming before? We have a general statement that resulted
17 in a revision of the programming. What revision? I don't
18 know how one could draw -- make findings that something --
19 this was laudatory when we don't even know what the revision
20 was. So, as far as I can see, the whole paragraph is
21 worthless but I'll leave it in. Any other objections?

22 MR. SCHAUBLE: Your Honor, that concludes my
23 objections to Exhibit 34.

24 JUDGE CHACHKIN: TBF Exhibit 34 is received.

25 (Whereupon, the document referred to

1 as TBF Exhibit 34 is received into
2 evidence.)

3 MR. EMMONS: Next, Your Honor, I'll identify TBF
4 Exhibit 35, the testimony of Christopher A. Holt, consisting
5 of nine pages plus a signature page.

6 JUDGE CHACHKIN: All right. The document described
7 as marked for identification is TBF Exhibit 35, and I've
8 indicated I'm going to reserve ruling on receipt of the
9 exhibit.

10 (Whereupon, the document referred to
11 as TBF Exhibit 35 was marked for
12 identification.)

13 MR. EMMONS: Your Honor, I should also have added
14 that there are two tabs on, on that exhibit, Tab A and Tab B.

15 JUDGE CHACHKIN: All right. The identification
16 should include Tab A and Tab B, and I'll reserve a ruling on
17 the exhibit plus the tabs.

18 MR. HONIG: Your Honor?

19 JUDGE CHACHKIN: Yes?

20 MR. HONIG: There's one, there's one other aspect of
21 this exhibit which has not been addressed in the previous
22 discussion of it and that relates to Tab B --

23 JUDGE CHACHKIN: All right.

24 MR. HONIG: -- which specifies both network and
25 local programming. While there's been no definition provided

1 of network and local programming, it may be that, that
2 Trinity's counsel can be helpful and we can stipulate to this.
3 If you -- in, in Exhibit 32, page 29 which was Mr. Everett's
4 testimony, paragraph 52, Mr. Everett speaks of three or four
5 programs produced by Trinity in Miami. It's, it's not clear
6 from this whether these programs, the "The Hawaiians," "New
7 Directions," "The Coral Ridge Hour," "A New Breed of Man,"
8 and there are -- I guess are others, are considered by Trinity
9 to be local programs, or whether they are considered to be
10 network programs irrespective of the community in which they
11 happen to be produced.

12 MR. EMMONS: Your Honor, without looking at the
13 composite week logs I can't even be sure that the programs
14 that Mr. Honig mentioned appear at all in this composite week
15 analysis so it may be a moot point. But on the assumption
16 that it isn't a moot point, as explained in, in Mr. Holt's
17 testimony, the characterization -- or categorization I should
18 say of a program as either network or local was by simply
19 taking exactly what the log said with one qualification which
20 was a conservative qualification which is that where the
21 program was indicated with the designation "REC" for recorded,
22 we counted that as network rather than local. In other words,
23 we did not count something as local unless the log
24 specifically designated it as local with the exception that if
25 the term "local" appeared in the title of the program then we

1 did. But so, if the log said local, that's, that's what this
2 chart in Tab B refers, if the log said recorded or network,
3 then that's counted as network under this chart. I would be
4 happy to stipulate with Mr. Honig along the lines he suggested
5 if, if we can check it against the logs.

6 MR. HONIG: Your Honor, I think that's constructive
7 if, if counsel would provide a list of programs which were
8 classified as network and those classified as local we'd be
9 happy to stipulate to it.

10 JUDGE CHACHKIN: All right.

11 MR. EMMONS: Well, that's broader than what I
12 thought Mr. Honig had, had -- that would be an enormous task
13 to go through all those logs again. I thought Mr. Honig was
14 referring to specific programs, "Hawaiian --"

15 MR. HONIG: Produced in -- whether programs produced
16 in the Miami area are classified as local or as national. I
17 could limit to that. That's fine.

18 MR. EMMONS: We'll, we'll review the logs on that,
19 Your Honor, and offer a stipulation.

20 JUDGE CHACHKIN: All right. So, the next one is --

21 MR. EMMONS: Then the last one, Your Honor, the last
22 TBF exhibit is TBF Exhibit 36, which is a -- which is the --
23 well, it's entitled "Diversification and Media Interests of
24 the Officers and Directors of Trinity Broadcasting of Florida,
25 Inc." It consists of 10 pages of text plus a signature page

1 of the sponsoring witness, Paul F. Crouch, and contains three
2 tabs, Tab A, B, C.

3 JUDGE CHACHKIN: All right. The document described
4 is marked for identification as TBF Exhibit 36.

5 (Whereupon, the document referred to
6 as TBF Exhibit 36 was marked for
7 identification.)

8 JUDGE CHACHKIN: Any objections?

9 MR. SCHAUBLE: Yes, Your Honor. On page 1, the
10 first page of the exhibit, I object to, "TBF was recognized as
11 a tax-exempt public charity by the Internal Revenue Service on
12 October 14, 1980" and the following sentence. And also to
13 Tab C of the exhibit on, on the basis of relevance. I don't
14 understand the relevance of, of those materials to
15 diversification.

16 JUDGE CHACHKIN: What is the relevance?

17 MR. EMMONS: Well, it's -- Your Honor, this is -- we
18 have an applicant, this is, this is the basic structure of the
19 applicant and that, that's always been relevant in, in -- as
20 background information about an applicant. It is a charitable
21 institution and that's I think relevant to the services that
22 the station endeavors to perform and is reflected in its
23 renewal expectancy showing.

24 JUDGE CHACHKIN: Well, how is that relevant to a
25 renewal expectancy showing whether or not it has such --

1 | characterized by the Internal Revenue Service?

2 | MR. EMMONS: Well, it operates for charitable
3 | purposes and --

4 | JUDGE CHACHKIN: Well, what does that have to do
5 | with renewal expectancy? Are you saying that, are you saying
6 | that it should be treated differently than a commercial
7 | station in determining whether or not it's entitled to renewal
8 | expectancy or what? What's the point?

9 | MR. EMMONS: Well, not, not that it should be
10 | treated differently, but, but that it is a -- that it's
11 | dedicated to charitable purposes, its, its outreach programs
12 | that are described elsewhere in the testimony are, are
13 | consistent with that, and it's also basic information about,
14 | about the applicant.

15 | MR. SCHAUBLE: Your Honor, this, this doesn't even
16 | purport to be an exhibit concerning renewal expectancy. And
17 | this -- we're also dealing with a commercial station here,
18 | we're not dealing with a noncommercial educational licensee.
19 | And this is -- I mean, even assuming some sort of showing
20 | could be made in that regard, this is far too general to have
21 | any evidentiary value in that regard.

22 | JUDGE CHACHKIN: Well, that's, that's my difficulty
23 | as far as evidentiary value. If you want to put it in for --
24 | just for background purposes that's one thing, but if you're
25 | going to make some sort of argument that it should be treated

1 -- given some different treatment by the Commission because of
2 the nature of the -- because it was recognized as a tax-exempt
3 public charity, that's what gives me difficulty. I don't know
4 any precedent --

5 MR. EMMONS: No --

6 JUDGE CHACHKIN: -- which allow to be treated
7 differently.

8 MR. EMMONS: No, we don't intend to argue that we
9 should be treated any differently, Your Honor. This is, this
10 is here for background purposes.

11 JUDGE CHACHKIN: Well, if it's just limited for
12 background purposes I'll allow it in. Any other objection?

13 MR. SCHAUBLE: Yes, Your Honor. Page 2,
14 paragraph 2, Paul F. Crouch, I object to the phrase, "All of
15 which are tax-exempt public charities," on the same basis.

16 JUDGE CHACHKIN: I'm only allowing it in for --
17 strictly for background purposes and -- no evidential value in
18 terms of determining the merits of this case.

19 MR. SCHAUBLE: No further objections.

20 JUDGE CHACHKIN: Is that agreeable to you, counsel?

21 MR. EMMONS: Yes, sir.

22 JUDGE CHACHKIN: All right.

23 MR. SCHAUBLE: No further objections, Your Honor.

24 JUDGE CHACHKIN: Any other objections?

25 MR. HONIG: No, Your Honor.

1 MR. SHOOK: No, Your Honor.

2 JUDGE CHACHKIN: TBF Exhibit 36 and Tabs A, B and C
3 are received.

4 (Whereupon, the document referred to
5 as TBF Exhibit 36, and Tabs A, B and
6 C, were received into evidence.)

7 MR. EMMONS: Your Honor, we have a couple of more
8 stipulation exhibits -- a result of informal process that
9 Glendale and Trinity have worked on in the last many days.
10 There are two exhibits. One is a stipulation regarding
11 testimony of Michael S. Everett, and this one ought to be
12 identified as TBF/Glendale Joint Exhibit 3, and I'll make that
13 change because we had typewritten number two rather than
14 three. This is an exhibit of four pages including a signature
15 page reflecting signatures of counsel for Trinity Broadcasting
16 of Florida, Inc., and for Glendale Broadcasting Company.

17 JUDGE CHACHKIN: The document described is marked
18 for identification as TBF/Glendale Joint Exhibit 3.

19 (Whereupon, the document referred to
20 as TBF/Glendale Joint Exhibit 3 was
21 marked for identification.)

22 MR. EMMONS: Offer it into evidence at this time,
23 Your Honor.

24 JUDGE CHACHKIN: Any objection? TBF/Glendale Joint
25 Exhibit 3 is received.

1 (Whereupon, the document referred to
2 as TBF/Glendale Joint Exhibit 3 is
3 received into evidence.)

4 MR. EMMONS: Has that been received, Your Honor?

5 JUDGE CHACHKIN: Yes.

6 MR. EMMONS: Next, another stipulation regarding
7 testimony of Teresa Robin Downing. This is a five-page
8 document reflecting the signatures of counsel for Trinity
9 Broadcasting of Florida, Inc., and counsel for Glendale
10 Broadcasting Company.

11 JUDGE CHACHKIN: The document described is marked
12 for identification as TBF/Glendale Joint Exhibit 4.

13 (Whereupon, the document referred to
14 as TBF/Glendale Joint Exhibit 4 was
15 marked for identification.)

16 MR. EMMONS: I would now distribute copies, Your
17 Honor, and ask that it be received in evidence.

18 JUDGE CHACHKIN: Any objections? TBF/Glendale Joint
19 Exhibit 4 is received.

20 (Whereupon, the document referred to
21 as TBF/Glendale Joint Exhibit 4 is
22 received into evidence.)

23 MR. SCHAUBLE: Your Honor?

24 JUDGE CHACHKIN: Yes?

25 MR. SCHAUBLE: Pursuant to our -- as part of our

1 | agreement I also have a Glendale exhibit which would be
2 | offered into evidence concerning the renewal --

3 | JUDGE CHACHKIN: Let, let's finish with the joint
4 | exhibits.

5 | MR. EMMONS: I think that's all I have, Your Honor.

6 | JUDGE CHACHKIN: You, you have an exhibit?

7 | MR. SCHAUBLE: Yes, Your Honor. This is a -- it's a
8 | one-page exhibit, memorandum -- it was part of the public
9 | affairs -- TBF public affairs manual excerpts of which are
10 | contained in Tab A of TBF Exhibit 33 and this would be
11 | considered -- this would be another portion of its material.
12 | Your Honor, Glendale has previously exchanged 209 exhibits so
13 | I would ask that this exhibit be marked for identification as
14 | Glendale Exhibit 210.

15 | JUDGE CHACHKIN: The one-page document is marked for
16 | identification as Glendale Exhibit 210.

17 | (Whereupon, the document referred to
18 | as Glendale Exhibit 210 was marked
19 | for identification.

20 | MR. SCHAUBLE: And, Your Honor, at this time I'd ask
21 | that Glendale Exhibit 210 be received into evidence.

22 | JUDGE CHACHKIN: Any objection?

23 | MR. EMMONS: No objection, Your Honor.

24 | JUDGE CHACHKIN: Glendale Exhibit 210 is received.

25 | (Whereupon, the document referred to

1 as Glendale Exhibit 210 is received
2 into evidence.)

3 JUDGE CHACHKIN: We're now in recess till
4 1 o'clock.

5 (Whereupon, off the record for a lunch recess to
6 reconvene at 1:00 p.m.)

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A F T E R N O O N S E S S I O N

JUDGE CHACHKIN: All right. I assume that concludes the exhibits dealing with renewal expectancy.

MR. TOPEL: Yes, Your Honor.

JUDGE CHACHKIN: All right. I just should indicate that we've ended with TBF Exhibit 36 and we're now turning to 101. I have agreed -- nobody objected to allowing TBF to use -- start with 100 for the next series of exhibits which deal with a different subject matter. I'm trying to explain the fact that there is a number of -- numbers missing between 36 and 101, that's the reason for it. All right. Let's proceed.

MR. TOPEL: Thank you, Your Honor, and I'd like to state on, on the record our appreciation for your, your allowing us to proceed in that manner. It made it possible for us to get our exhibits organized within the time schedule so we appreciate that. Your Honor, the first exhibit I'm going to ask to be identified is a joint exhibit. It was exchanged I believe on November 18th, and it's, it's numbered Joint Exhibit 1. It's called a stipulation. This is a stipulation between or among all the parties to this case, unlike the Glendale/TBF joint exhibits which were just between those two parties. And I would ask the -- to have marked for identification as Joint Exhibit No. 1 a document titled "Stipulation." First pages have counterpart signatures of counsel for all parties. After the third page it begins with

1 the heading "Testimony of David Scott Morris and continues
2 through 38 pages followed by sponsoring declaration and I ask
3 that that be marked for identification as Joint Exhibit 1.

4 JUDGE CHACHKIN: The document described will be
5 marked for identification as Joint Exhibit 1.

6 (Whereupon, the document referred to
7 as Joint Exhibit 1 was marked for
8 identification.)

9 MR. TOPEL: And I move it into evidence, Your Honor.

10 JUDGE CHACHKIN: Joint Exhibit 1, stipulation of the
11 parties, is received in evidence.

12 (Whereupon, the document referred to
13 as Joint Exhibit 1 is received into
14 evidence.)

15 MR. TOPEL: Thank you, Your Honor. You asked that
16 we proceed by volumes. I am now --

17 JUDGE CHACHKIN: Well, I don't know if it's possible
18 -- I don't know --

19 MR. TOPEL: Yes.

20 JUDGE CHACHKIN: -- the extent of the exhibits.

21 MR. TOPEL: I think it is possible, Your Honor.

22 JUDGE CHACHKIN: All right. Then let's proceed.

23 MR. TOPEL: The first exhibit consists of four
24 volumes and those are Volumes II-A(1) which has on the cover
25 page the number TBF Exhibit 1, Volume I and then continues

1 through numbers II, III and IV -- Volumes II, III and IV. And
2 I ask to have marked for identification as Trinity -- TBF
3 Exhibit 101, a document that is captioned, "Testimony of Pearl
4 Jane Duff." It consists of 70 pages of testimony followed by
5 a supporting declaration. And then tabs that run from A
6 through X and then resume again from AA through II. And I ask
7 that that be marked for identification as TBF Exhibit 101.

8 JUDGE CHACHKIN: The document described will be
9 marked for identification as TBF Exhibit 101.

10 (Whereupon, the document referred to
11 as TBF Exhibit 101 was marked for
12 identification.)

13 MR. TOPEL: Yes, and Your Honor, I move that exhibit
14 into evidence.

15 JUDGE CHACHKIN: Any objections?

16 MR. COHEN: Yes, sir.

17 JUDGE CHACHKIN: All right. First, let's take up
18 the -- Ms., Ms. Duff's testimony. That's 101.

19 MR. COHEN: Yes, sir.

20 JUDGE CHACHKIN: Nature of the objection?

21 MR. COHEN: Paragraph 3, Your Honor, I object to the
22 sentence -- the second sentence beginning, "In this testimony
23 I will first give a preliminary overview." And then I object
24 to, "I will -- I then will address the specific factors that
25 are mentioned in the FCC's hearing designation order." I, I

1 have no problem with this if this is coming in as background
2 with no -- if it'll have no evidentiary weight. I'm not
3 trying to quibble. But I do have some standard objection to
4 the -- that portion of the exhibit dealing with the specific
5 factors that are mentioned in the FCC's hearing designation
6 order and so I, I -- that's why I've said what I have.

7 MR. TOPEL: Would you like a response, Your Honor?

8 JUDGE CHACHKIN: Yes.

9 MR. TOPEL: I don't understand the objection. I, I
10 think it is a quibble. The testimony -- it's long testimony,
11 it contains three Roman Numeral headings and all this language
12 says is this is -- it's an outline of what's coming in the
13 testimony. I don't think there's anything confusing or
14 objectionable about it. It's --

15 MR. COHEN: I didn't say it was --

16 MR. TOPEL: -- it's an introduction to the
17 testimony.

18 MR. COHEN: I didn't say it was confusing. I said
19 that it was irrelevant.

20 JUDGE CHACHKIN: I'll overrule the objection just to
21 those two sentences. Now, it may be that when we get to the
22 actual testimony under these headings maybe -- be entitled to
23 object, but I, I don't see any problem with just stating how
24 they're going to be -- how she's going to proceed in her
25 testimony.

1 MR. COHEN: Very well, Your Honor. Paragraph 4.

2 JUDGE CHACHKIN: Yes?

3 MR. COHEN: I object to the next-to-the-last
4 sentence, the word "important" and the word "significant."
5 That -- those are conclusory words and it's not proper to
6 offer conclusions such as that.

7 MR. TOPEL: Your Honor, I would respectfully
8 disagree. That's this witness's testimony, that's why we have
9 cross-examination and Mr. Cohen is perfectly free to ask her
10 -- Mrs. Duff why she thinks that these were important
11 junctures and why she thought that they were significant
12 corporate issues. But she's certainly allowed to testify
13 that, that that's her statement of what occurred.

14 JUDGE CHACHKIN: The objection is overruled.

15 MR. COHEN: Page 3, page 3, in a paragraph, "He
16 agreed with me," is hearsay, it doesn't seem to me this is
17 coming in for her state of mind, this is coming in for the
18 truth of the proposition asserted and I think it's improper.

19 MR. TOPEL: Well, Your Honor, the witness is
20 describing what transpired at a meeting. As Mr. Cohen knows,
21 Mr. Espinoza will be here himself in any event so it's --
22 there's no, there's no unfilled portion of the record on that
23 issue. Mrs. Duff is describing what happened at a meeting.

24 JUDGE CHACHKIN: Since -- as pointed out, Pastor
25 Espinoza's here, we don't have a hearsay problem, you can

1 question Mr. -- Pastor Espinoza concerning what took place.

2 The objection is overruled.

3 MR. COHEN: For the record, I make the same
4 objection. Dr. Crouch disagreed. He said he wanted -- to
5 build a Houston market station. Same objection.

6 JUDGE CHACHKIN: Overruled.

7 MR. COHEN: Later in the paragraph five lines from
8 the bottom, "Pastor Espinoza and I decided." That is also --
9 that's also based on what -- I make the same objection.

10 JUDGE CHACHKIN: Overruled.

11 MR. COHEN: I make the same objection in paragraph
12 B, "Dr. Crouch wanted to sell the permit and Pastor Espinoza I
13 wanted to keep it and build the station."

14 JUDGE CHACHKIN: Overruled.

15 MR. COHEN: Same objection, "Dr. Crouch expressed
16 the view that NMTV should sell the Odessa permit and try to
17 acquire a station in another area."

18 JUDGE CHACHKIN: Overruled.

19 MR. COHEN: Same objection, "Pastor Espinoza and I
20 strongly disagreed."

21 JUDGE CHACHKIN: Overruled.

22 MR. COHEN: In --

23 MR. TOPEL: Mr. Cohen, could you now focus me on
24 where you are?

25 MR. COHEN: I'm sorry. I, I was in paragraph B and

1 I, I didn't mean to --

2 MR. TOPEL: No, that's all right. Thank you.

3 MR. COHEN: -- not keep you up to date. The middle
4 of paragraph B, "Pastor Espinoza agreed with me and stressed
5 that the Odessa area had many Hispanics who deserved to be
6 served."

7 JUDGE CHACHKIN: And the basis of your objection is
8 hearsay?

9 MR. COHEN: Yes. She's testifying here as to what
10 -- in effect as to what Pastor Espinoza told her and that --
11 and she's -- this is not coming in to show her state of mind,
12 this is coming in to the truth of what Pastor, Pastor Espinoza
13 was supposed to have told her.

14 JUDGE CHACHKIN: Well, how, how would you -- when
15 you call witness and you call a witness A and Witness A, ask
16 him, what took place, the following took place; and, and
17 witness B is going to testify -- is going to be there then how
18 could you have a hearsay objection? He's describing what,
19 what transpired. Each witness is describing what transpired.
20 As long as they're here for you to cross-examine how could
21 there be a problem with it? I don't quite understand the
22 objection.

23 MR. COHEN: Okay. Very well, Your Honor. I'll pass
24 on. I don't want to, I don't want to spend any more time on
25 that. I now turn to page 5, paragraph 5, and this I think is

1 -- this is now a different objection, Your Honor.

2 JUDGE CHACHKIN: All right.

3 MR. COHEN: NMTV Minority Control Board. Now, the
4 word control here is, is the determination that you're going
5 to have to make and ultimately the Commission will make and
6 that's what the issues call for, and --

7 JUDGE CHACHKIN: Now, where is this now?

8 MR. COHEN: Paragraph 5, the last line.

9 JUDGE CHACHKIN: Paragraph 5.

10 MR. COHEN: That, that is a conclusion --

11 JUDGE CHACHKIN: I see.

12 MR. COHEN: -- which you're going to have to reach.

13 And she can state her, her -- as she does frequently here what
14 she believes, but that's not what this says.

15 JUDGE CHACHKIN: Any comment on that?

16 MR. TOPEL: Yes, Your Honor. It's, it's explained
17 in the paragraph where she talks about events that the
18 minorities on the board caused the company to take, and again,
19 it's the witness's testimony. I think Your Honor is perfectly
20 able to understand that that's not a legal conclusion that
21 binds you in any way but it's the witness's testimony of her
22 perception of what happened and I'm sure there's going to be
23 cross-examination on what she thinks minority control means.

24 JUDGE CHACHKIN: I'll strike the words "minority
25 control." This is a conclusion which has to be reached by the

1 triers of the fact whether there's minority control or not.

2 Any other objections?

3 MR. COHEN: Yes, I'm, I'm trying to, trying to
4 phrase it.

5 JUDGE CHACHKIN: I'll also strike the last sentence
6 as a conclusion. Last sentence of paragraph, paragraph 5,
7 yes.

8 MR. SCHONMAN: Your Honor, could I speak to that --

9 JUDGE CHACHKIN: Yes.

10 MR. SCHONMAN: -- and ask that you limit your ruling
11 to the, to the words "minority control" to which the objection
12 went to? The concept of whether the board functions and is a
13 functioning board is a matter that the witness is entitled to
14 testify. The issue in the case here is very much state-of-
15 mind and what people believed when they were making filings
16 with the Commission and this is the witness's description of,
17 of what she believed.

18 JUDGE CHACHKIN: I don't see how the witness' belief
19 is, is relevant.

20 MR. COHEN: Absolutely. That's my view, Your Honor.

21 JUDGE CHACHKIN: It's what took place and how they
22 function that's relevant.

23 MR. TOPEL: Well, Your Honor, the -- but the last
24 clause, "I at all times have considered NMTV to be a minority-
25 controlled company."

1 JUDGE CHACHKIN: That's irrelevant.

2 MR. COHEN: That's irrelevant.

3 JUDGE CHACHKIN: Her, her belief is irrelevant if in
4 fact it wasn't a minority-controlled company.

5 MR. TOPEL: But, Your Honor, there's --

6 JUDGE CHACHKIN: How is her belief relevant if in
7 fact it's not a minority-controlled --

8 MR. TOPEL: There's an abuse of process issue in
9 this case and, and the case law is very clear that, that abuse
10 of process gets decided on whether there was an intent to
11 abuse process. So, if she believed and the circumstances show
12 that her belief was honestly founded, even if it was erroneous
13 when we certainly couldn't concede, but the, the central
14 aspect of whether a licensee gets disqualified is whether it
15 proceeded in bad faith or good faith; intent is the core of
16 the issue, her belief is the core of the issue.

17 JUDGE CHACHKIN: Any comments, Mr. Cohen?

18 MR. COHEN: Well, I believe that subject to the --
19 the minority-controlled -- that, that is -- as you stated
20 earlier, Your Honor, that's, that's a conclusion to be reached
21 and this is bootstrapping, that's what this amounts to. I
22 mean, she can repeat over and over again that this is a
23 minority-controlled company but that still is exactly what is
24 at issue in this proceeding.

25 JUDGE CHACHKIN: The Bureau have any views on this?